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The dismissal and the hungarian citizenship in accordance with Act 50 of 1879

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Act 50 of 1879 lists five cases whereby Hungarian citizenship could be lost. These are the following: dismissal, authority's decisions, absence, legitimization and marriage.¹ This list of the law is also taxative. Hungarian citizenship could not be lost by way of resignation or the acquisition of foreign citizenship. A Hungarian citizen would keep his or her citizenship until losing it for any of the above-mentioned reasons, even if he or she became the citizen of another country in the meantime.

In 1884, the Hungarian Minister of the Interior sent an official communication to his Austrian counterpart on the issue of adoption under status law. According to Act 50 of 1879, citizenship could not be either acquired or lost by way of adoption². In a case involving the adoption of a child of Hungarian citizenship, the Minister of the Interior declared that this was not included among the reasons whereby citizenship would be lost. Therefore, he rejected the possibility that the Hungarian child assume his adoptive parents' Austrian citizenship by way of the act of adoption³, which shows that the officials participating in the procedure strictly adhered to the ways of losing citizenship listed in the law⁴.

The first case of the loss of citizenship was dismissal⁵. This was also the most problematic way of losing one's citizenship. The law provided an opportunity to Hungarian citizens to renounce

¹ Ladik G., *Közigazgatásunk fejlődése 1867 óta* [The development of Hungarian public administration since 1867]. Budapest, 1933. p. 11-12., Kisteleki K., *Magyar állampolgárság a XX. században* [Hungarian citizenship in the 20th century]. Állam- és Jogtudomány, 2000. p. 57-58.

² Vidovich E., *Tudnivalók állampolgársági és illetőségi ügyekben* [Information on issues of citizenship and residence in a township]. Székesfehérvár, 1938. p. 4.

³ Ministry of the Interior official communication no. 47159 1884. Berényi S., Tarján N., *A magyar állampolgárság megszerzése és elvesztése (honosság, letelepülés, kivándorlás, útlevelelügy)*. Az 1879. évi L. törvény-czikk és az ezzel kapcsolatos törvények s rendeletek gyűjteménye és magyarázata [The acquisition and loss of Hungarian citizenship (national status, settling, emigration, passport regulations). A collection and explanation of Act 50 of 1879, as well as related laws and regulations. Budapest, 1905. p. 4-5., Pongrácz J., *Magyar állampolgárság és községi illetőség. Törvények, rendeletek, elvi határozatok, díjak és illetékek, magyarázat, iratminták* [Hungarian citizenship and township residence. Laws, decrees, principle decisions, fees and dues, explanation, sample documents]. Budapest, 1938. p. 18-19. This was not listed among the possible reasons for losing citizenship. Beleznai J., *A magyar állampolgárságról* [On Hungarian citizenship]. Debrecen, 1941. p. 46.

⁴ Berényi, Tarján, 1905. p. 6. Yet another example given by the authors is that conversion to the Islamic faith would not allow the loss of Hungarian citizenship either.

⁵ Sections 21 to 30 of Act 50 of 1879 discuss the loss of Hungarian citizenship by way of an authority's decision together with dismissal, even though these two modes were completely different. Vajda J., *Ki marad magyar állampolgár? Ki veszíti el magyar állampolgárságát? Az új magyar állampolgársági törvény ismertetése* [Who will remain a Hungarian citizen? Who will lose his Hungarian citizenship? A description of the new Hungarian citizenship law]. Budapest, 1939. P. 6-9., Bródy E.,

their citizenship and to break ties with the bonds of the Hungarian state. For dismissal to be valid, the will of the individual and of the state had to meet, whereby it was not sufficient for a citizen to unilaterally give up citizenship, as such statements had no legal effect; therefore, the consent of the state was also necessary for the validity of dismissal⁶.

The precondition of dismissal was that the applicant had to have fulfilled all obligations toward the Hungarian state and not renounce citizenship with the intention of getting exempted from under these obligations⁷. It follows from the above that the procedure was always initiated at personal application, and only Hungarian citizens could be dismissed⁸.

Before dismissal, the applicant had to have settled all obligations toward the state, of which military service was the most important. It was not impossible for persons in military service to receive an approval to their applications. Persons in regular, reserve and supplementary reserve service⁹ could only be dismissed with the permission of the Minister of War. Persons of at least 17 years of age who were not under such obligations but have not yet been finally exempted from military service had to be dismissed only if the competent municipality certified that the objective of such persons in their application was not gaining defense obligations¹⁰.

Those domestic citizens who left their service obligations before fulfilling a specific period of time were given a letter of discharge, and could request the termination of their citizenship without the need for any further permission. persons who left the territory of the austro-hungarian monarchy for the purpose of evading military service, or stayed outside of the borders during the time of recruitment committed were prosecuted. pursuant to Section 45 of Act 6 of 1889, perpetrators could be punished by up to one year of imprisonment and a fine of one thousand forints.

The discharge necessary for emigration before the fulfillment of service obligations was issued by the common Minister of War in case of the joint army and the navy, and by the Hungarian Minister of War in case of the Hungarian army. In case of regular conscripted servicemen, permission was only granted if the applicant's parents also emigrated together with him. Dismissal was to be regarded as valid if the person involved moved abroad during the one-year period with the intention of settling down there. If the settling down did not take place within the pre-determined time period, then the person was required to serve the remaining time of his military service.

No person in military service could be given a discharge in the time of war or mobilization. Because of the special public law status existing between Hungary and Austria, an exemption

Ki a magyar állampolgár? [Who is a Hungarian citizen?]. Budapest, 1938. P. 24., Némethy I., *Állampolgárság és községi illetőség a magyar jogban* [Citizenship and township residence in Hungarian law]. Budapest, 1938. p. 7-8., Peregriny G., Jacobi, R., *Magyar állampolgárság, községi illetőség és idegenrendészet* [Hungarian citizenship, township residence and foreign registration]. Budapest, 1938. p. 27-29.

⁶ Ferenczy F., *Magyar állampolgársági jog* [Hungarian citizenship law]. Gyoma, 1930. p. 74-75.

⁷ Pongrácz, 1938. p. 19.

⁸ Ferenczy, 1930. p. 76, Tar J., *Állampolgárság* [Citizenship]. Debrecen, 1941. p. 20-21. Therefore, it had to be examined at the time applications were submitted whether the applicant was of Hungarian rights and why the termination of citizenship was necessary. The person to be dismissed had to submit proof of his Hungarian citizenship.

⁹ The service obligations of these persons were regulated in Act 6 of 1889, in case of army servicemen in Act 5 of 1890, and the obligation for insurrection in Act 21 of 1886

¹⁰ According to the conscription law, military obligations started on the 21st birthday of the person involved and came to an end on December 31 of the year when he turned 23. Berényi, Tarján, 1905. p. 78-79, Pongrácz, 1938. p. 20.

was made on the basis of reciprocity for those to whom the prospects of Austrian citizenship were held out. Such persons were discharged from the ties of the state if they otherwise met the general conditions¹¹.

According to Gejza Ferdinándy, Section 25 of Act 5 of 1890 on the Hungarian Army was drafted improperly, whereby „servicemen who are granted citizenship in another state of the Monarchy shall be transferred to a military unit on the basis of his new place of residence with the maintenance of such person's service obligation. [This is erroneous, since] such a person's military obligations are terminated together with his citizenship, and his military service according to the laws of his new country do not constitute a continuation of his interrupted military service in his former country, but is an obligation deriving out of his new citizenship, and therefore, his old service obligation cannot be maintained”¹². In his opinion, the correct text of the law should have read: „servicemen who are dismissed from the ties of the Hungarian state and who are granted citizenship in another state of the Monarchy shall, for the purpose of performing the military obligations according to their new country, be transferred, on the condition of reciprocity, to an appropriate unit of the imperial and royal Austrian Army at the request of the relevant imperial and royal Austrian military authority”¹³.

In an official communication, the Hungarian Minister of War informed the Hungarian Minister of the Interior¹⁴ that there should be no obstacles to the dismissal of those who did not have Hungarian citizenship at the time of the drafting of people of his age and only obtained citizenship subsequently¹⁵.

Hungarian citizens had to provide proof of three conditions: that they have the capacity to act, or in case of minors, the consent of his father or guardian was obtained to the dismissal; that they have no unpaid public debt; that they are not under criminal procedure or under the execution of a court judgment¹⁶.

According to the justification of the Minister, the latter two was important because Hungarian taxes could not be collected or the judgments of Hungarian courts enforced abroad¹⁷.

Such termination of citizenship was also extended to the wife and children of a dismissed husband¹⁸. In case the wife and the children did not move out of the country, the law ensured that they were not stateless. The law separated their legal status from that of the head of the

¹¹ Berényi, Tarján, 1905. p. 71-73.

¹² Ferdinándy G., *Magyarország közigazgatási jogja (Alkotmányjog)* [Public law of Hungary (Constitutional law)]. Budapest, 1902, p. 247.

¹³ Op. cit. p. 247, Pongrácz, 1938. p. 26.

¹⁴ Ministry of War official communication no. 4946. In: Berényi, Tarján, 1905, p. 73.

¹⁵ Op. cit. p. 73.

¹⁶ Ferenczy, 1930. p. 77, Pongrácz, 1938. p. 27-28, Tar, 1941. p. 21, Stein A., *Népszerű tájékoztató állampolgársági ügyekben* [Popular information in citizenship cases]. Budapest, 1947. p. 14., Peregriny G., Jacobi R., 1938. p. 28.

¹⁷ Op. cit. p. 77.

¹⁸ Vajda, 1939. 9. p., Bródy A., Bán K., *Állampolgárság és illetőség. A Magyarországon érvényben lévő jogszabályok ismertetése, különös tekintettel a belügyminiszteri és a közigazgatási bíróság legújabb gyakorlatára. Kérvényminták, díjak és illetékek betűsoros tárgymutatója* [Citizenship and residence. The description of the laws and regulations in effect in Hungary, with special attention to the recent practice of the Minister of the Interior and of the Administrative Courts. Samples of applications, fees and stamp duties in an alphabetical listing.]. Budapest, 1938. p. 19.

family, and provided that they are only dismissed if they leave the territory of the country together with the husband or father¹⁹.

It was presumed, therefore, that the will of the head of the family coincides with the intentions of all other members of the family, who could, however, show the opposite by way of a passive behavior. Legal protection was not possible if the family had moved abroad previously.

Married women also had the opportunity to request dismissal on their own right. In such cases, the legal effects were very different in terms of other members of the family, since the dismissal only applied to the applicant herself. For the dismissal of her children, the consent of the father was also necessary²⁰.

Discontinuation of cohabitation was not an obstacle to the granting of dismissal. The legal capacity of a woman was not affected by whether or not she lived together with her husband. In an official communication, the Minister of Justice declared that spouses could have different citizenship as well²¹.

A divorced or widowed woman could freely decide on her own person, but she needed the consent of the public guardianship authority in case of a child below the legal age. It was also necessary that children over the age of 12 explicitly request the termination of their citizenship. In exceptional cases there was also an opportunity for the termination of a child's citizenship in such a way that his or her mother and father was not dismissed. In such cases the consent of the father (or if he was not alive, then the consent of the mother) was necessary, which also had to be endorsed by the public guardianship authority. In case of orphans, the guardianship authority made the decision on its own. The dismissal of a mentally ill person could only be requested by the guardian appointed by the competent court²².

The dismissal of a married woman could be refused if her husband had arrears of tax payment²³. It is apparent from the decision of the Minister of the Interior²⁴ that tax registrations were interpreted in a rather broad meaning of the word. For this reason, debts to the parish or other local religious community were also regarded as obstacles to dismissal until paid by the applicant. The Minister of the Interior called upon the competent sub-prefect to take measures in the interest of the payment of the arrears. If payment was effected, then the opportunity for re-submitting the case to the Minister of the Interior was given²⁵. According to the Minister, however, not all kinds of public debts were to be regarded as tax arrears. A debt in the expenses

¹⁹ Ministry of the Interior official communication no. 3810 of 19930. In: Berényi, Tarján, 1938. p. 79., Pongrácz, 1938. p. 28.

²⁰ Czebe J., *A magyar községi illetőségi jog és a magyar állampolgársági jog szabályai. (Tekintettel a kifejldött joggyakorlatra s kiegészítve az elszakított területeken érvényben lévő állampolgársági rendelkezésekkel)* [Hungarian laws and regulations on township residence and Hungarian citizenship law (With a view to the legal practice emerged, and supplemented with an overview of the citizenship regulations in effect on the annexed territories)]. Budapest, 1938. p. 370, Ferenczy, 1930. p. 78.

²¹ Ministry of the Justice official communication no. 11.531 of 1889. In: Berényi, Tarján, 1905. p. 76.

²² Ferenczy, 1930. p. 79, Peregriny, Jacobi, 1938. p. 180-182.

²³ According to Act 44 of 1883 (on public taxes), Section 95, joint and several liability existed with regard to commercial taxes levied on the head of the family.

²⁴ Ministry of the Interior regulation no. 2320 of 1889. In: Berényi, Tarján, 1930, p. 77.

²⁵ Op. cit. p. 77, Czebe, 1938, p. 369, Peregriny, Jacobi, 1938, p. 179.

of caring for foundlings was not regarded as an obstacle to dismissal, since it was of private law nature. Similarly, arrears on the payment of fair and market district fees were not an obstacle, since these could not be considered as township or municipal taxes²⁶.

If the above requirements were fulfilled, a person could be dismissed from the ties of the Hungarian state. The deed of dismissal was always to be delivered to the applicant himself or herself. The significance of this laid in the fact that the applicant lost his or her citizenship upon receipt of this letter. It could happen, however, that the applicant either refused to take over the letter, or failed to receive it for any other reasons, and consequently, dismissal lost its validity. In extraordinary and exceptional cases, authorized attorneys could also receive the letter. In such cases, these attorneys had to undertake the responsibility that they shall deliver the deed, and then report the date of such receipt to the local authorities and to the Minister of the Interior²⁷. In 1892 the Minister also issued an executive decree in connection with delivery²⁸, in which it was set down that the above authorization had to be given in a deed countersigned by an attorney-at-law or a notary public²⁹.

Dismissal became finally effective with the act of moving out. The law provided a period of one year for leaving the territory of the country, to be calculated from the day of receipt of the deed of dismissal. The person in question had the right to change his position, and no justification was necessary to be given. The rights and obligations of the dismissed person were suspended but not terminated in this period³⁰. In case any of the obstacles set forth by the law emerged, the dismissal was considered as invalid. This provision had great significance, since otherwise the dismissed person, as a non-Hungarian citizen, would have been exempt of his or her criminal liability³¹.

The definition of this one-year period was justified, on the one hand, that an intention to emigrate that was not acted upon during such a period could not be taken seriously. On the other hand, the applicant became a *quasi* re-naturalized person at the elapse of this time period, since, pursuant to Section 48, aliens who did not maintain their own citizenship in a period of one year became Hungarian nationals³².

Dismissal was usually requested by those citizens only who stayed outside the territory of the country before. For this reason, invalidity or dismissal due to the elapse of one year happened very rarely³³.

²⁶ Ministry of the Finance official communication no. 8387/91. In: Berényi, Tarján, 1905. p. 77-78, Czebe, 1938, p. 371, Peregriny, Jacobi, 1938, p. 179-180.

²⁷ Ferenczy, 1930, p. 80.

²⁸ Ministry of the Interior regulation no. 82.560/1892. In: Berényi, Tarján, 1905, p. 85-86.

²⁹ Op. cit. p. 85-86., Pongrácz, 1938, p. 29-30., Czebe, 1938, p. 378-380.

³⁰ Ferenczy, 1930, p. 81.

³¹ Berényi, Tarján, 1905, p. 80-81, Pongrácz, 1938, p. 30.

³² Berényi, Tarján, 1905, p. 81.

³³ Ferdinándy, 1902, p. 244, Peregriny, Jacobi, 1938, p. 184-185.

The above provisions applied for peacetime only³⁴. War changed the provisions inasmuch that the monarch had the final word of decision³⁵.

The application with detailed justification and supplementary documentation was to be addressed to the Minister of the Interior, but submitted to the highest official of the local municipality³⁶. Documents proving personal information (birth and marriage certificates), as well as proof of no public debt and of full legal capacity to act also had to be attached³⁷. A fee of two Pengös had to be paid for the application, and an additional 30 Fillers for each sheet of attachments³⁸.

In the decree of the Minister of the Interior on the execution of the law³⁹ it was provided that the certificate issued by the officials had to indicate that the objective of the applicant is not exemption from military obligation and also to fact whether he intended to leave the country together with his family or by himself. In the resolution, the names of his dismissed wife and children also had to be indicated. At the time of delivery of the deed, the conditions that could invalidate the resolution had to be notified to the applicant. The date of delivery had to be reported to the Minister of the Interior, as was also the fact if the applicant did not leave the country within one year or moved to another domestic township⁴⁰.

This executive decree, however, still failed to answer some of the practical problems that emerged in the meantime, and therefore, it was amended in 1892⁴¹. This executive decree was drafted by the Ministry of the Interior in agreement with the Ministry of War and the Ministry of Finance.

Those Hungarian applicants who intended to emigrate to Austria, the German Empire or Serbia had to present an official promissory note for admission to citizenship in these states, which also had to be renewed if it expired in the meantime.

The tax certificate was to be issued by the competent Hungarian Royal Tax Office. The applicant also had to submit his military registry book issued by the competent military replacement center, or an authenticated copy of the military registration records, if the applicant or anyone in his family was of military age. The military replacement center examined the case preliminarily if the applicant was in the ranks of the army (or navy) at the time of application.

³⁴ According to Section 21 of Act 50 of 1879, in the Hungarian and Fiume dismissal cases the Hungarian Minister of the Interior, while in case of applications received from Croatian, Slavonian and Dalmatian territories, the Croatian-Slavonian-Dalmatian Ban would be competent to decide.

³⁵ Kistelegi K., *Az állampolgárság a dualizmus idején* [Citizenship at the Time of the Dual Monarchy]. Állam és Jogtudomány, 1996–1997, p. 51, Csiky K., *Magyar alkotmánytan és jogi ismeretek kézi könyve* [Hungarian constitutional and legal studies]. Budapest, 1907, p. 38.

³⁶ Listed among the formal requirements of the application was the fact that it had to be submitted to the highest official of the municipality (sub-prefect, mayor) where the person in question had township residence. Berényi, Tarján, 1905, p. 80, Peregriny, Jacobi, 1938, p. 185–186.

³⁷ Ferenczy, 1930, p. 83–85.

³⁸ Pongrácz, 1938, p. 23, Bródy, Bán, 1938, p. 21.

³⁹ Ministry of the Interior Regulation no. 584 of 1880 on the execution of Act 50 of 1879 on the acquisition and loss of Hungarian citizenship. In: Berényi, Tarján, 1905, p. 81–82.

⁴⁰ Op. cit. p. 81–82.

⁴¹ Ministry of the Interior Regulation no. 23.901/1892. In: Op. cit. p. 82.

The tax for exemption from military service also had to be paid at the tax authorities, and the receipt attached to the application. The applications of persons that have exceeded the military age of 21 to 35 years were also sent to the financial department (tax inspectors). This was necessary as it frequently happened that individuals of military age were drafted not at the ordinary age as determined by Act 6 of 1889, but several years later. In such cases disqualification from military service or the obligation for the payment of the exemption tax could only be established later.

Applications submitted properly were to be immediately sent to the Minister of the Interior together with a report containing the opinion or proposal as to whether the applicant's request should be granted or not. Deficient applications were returned to the applicants⁴².

The Minister of the Interior had to request the opinion of the Minister of War in all cases when the applicant was of military age. The common (imperial) Minister of War was only asked when the individual belonged to the ranks of the common army and Austria was not his destination. The opinion of the Minister of Finance was also requested if the issue of tax arrears came up⁴³.

If the Minister of the Interior found the case to be in order, then he issued a deed of dismissal⁴⁴, which was then sent to the highest official of the competent municipality. Delivery took place subsequently.

In the course of the legislative process the principle was not accepted that the acquisition of a foreign citizenship would automatically terminate Hungarian citizenship, even though such a provision would have significantly simplified the administrative process. A separate act of dismissal from the ties of the Hungarian state would not have been necessary.

Further devaluing the importance of dismissal was the fact that the majority of countries did not request the termination of the former citizenship for their naturalization process⁴⁵. This led to a situation in which many people did not request dismissal⁴⁶.

The deed of dismissal, however, had the major advantage of certifying that the applicant has fulfilled all his obligations existing toward the state⁴⁷.

⁴² Op. cit. p. 82-83.

⁴³ Ferdinándy, 1902, p. 243.

⁴⁴ Op. cit. p. 243.

⁴⁵ Sweden and Norway made the acquisition of citizenship dependent on dismissal. Certain German members states, including Würtemberg on the basis of a decree from 1881, Lübeck in 1870, and Hamburg (Cahn W., *Das Reichsgesetz über die Erwerbung und den Verlust der Reichs- und Staatsangehörigkeit vom 1. Juni. 1871*. Berlin, 1908. passim) also acted similarly. It must be noted that the German citizenship act of 1870, however, did not set such conditions. Only few states (Russia, Luxemburg) demanded of their would-be citizens to certify the performance of their obligations, especially military ones, to their former home countries. The United States was satisfied with the resignation of the earlier citizenship by way of an oath. In Spain it was also accepted if one renounced citizenship. Special mention must be made of the Japanese regulation of 1899 whereby only such persons could be naturalized who were either stateless or who have lost their citizenship as a consequence of the acquisition of Japanese citizenship. Királyfi Á., *A magyar állampolgárság kizárólagossága* [The exclusivity of Hungarian citizenship]. Budapest, 1903, p. 108-109.

⁴⁶ THIRRING G., *A magyarországi kivándorlás és a külföldi magyarság* [Hungarian emigration and Hungarians abroad]. Budapest, 1904, p. 94.

⁴⁷ Czebe, 1938, p. 24-30, Királyfi Á., 1903, p. 88.